IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.902 OF 2001

Mrs.Sumati C.Patil .. Appellant.
Vs.
Mrs.Aditi Madhukar Vaidya & Ors. .. Respondents.

Mr.G.N.Salunke for the appellant.
Mrs.Usha Purohit for respondent nos.1, 3, 4, 5 and 7.

CORAM : D.B.BHOSALE, J.
DATED : 23RD JANUARY, 2007

P.C.:

. Heard learned counsel for the parties.

2. Mr.Salunke, learned counsel for the appellant, on instructions from his client, who is present in the court prayed for withdrawal of this appeal and submits that the appellant would like to adopt a remedy of suit seeking declaration that there was partition between the branches of Govind Vishnu Vinod and Gopal Vishnu Vinod and the property in dispute in the present proceedings was allotted to share of the heirs of Gopal. He further submits that in the alternative the appellant would also like to pray for partition seeking allotment of the land in dispute to the share of the appellant's vendor. He further submits that the parties be directed to maintain status quo for a period of eight weeks from today. Mrs.Usha Purohit, learned counsel for respondent nos.1, 3, 4, 5 and 7 has no objection for granting liberty to the appellant

for filing suit as aforestated, however, she submitted that if such a suit is filed same may be dealt with and decided on merits in accordance with law. In view of the submissions of the learned counsel for the parties I pass the following order:

. The appeal is allowed to be withdrawn with liberty as prayed for. The trial Court shall consider the prayer for interim relief and decide the suit, on merits, in accordance with law and without being influenced by the liberty granted by this court. It is open for the respondents to raise all the contentions, as may be available in law including an issue of limitation, challenging the reliefs claimed by the appellant in fresh suit that will be filed in pursuance of the liberty granted by this order. At this stage Mr.Salunke, learned counsel for the appellant seeks leave to challenge the execution, in which possession of the suit property has already been handed over to the respondents-plaintiffs in the present suit. Liberty as prayed for is granted. If the appellants challenge the exeuction as aforestated, same may be decided in accordance with law. It is open for the respondents-plaintiffs to raise an issue of limitation in the said proceedings. If the suit, as aforestated, is filed within eight weeks from today, same may be disposed of expeditiously. The appeal is disposed of.

(D.B.Bhosale, J.)